

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEREMIAH REVITCH, on behalf of
himself and all others similarly situated,

No. C 17-06907 WHA

Plaintiff,

v.

**ORDER RE MOTIONS
TO FILE UNDER SEAL**

CITIBANK, N.A.,

Defendant.

In our circuit, courts start with a “strong presumption in favor of access” when deciding whether to seal records. *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citation omitted). To seal records in connection with a “dispositive” motion, or one “more than tangentially related to the merits of a case,” requires “compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure.” *See id.* at 1178–79 (quotations and citations omitted). A particularized showing of “good cause” under FRCP 26(c), however, suffices to warrant sealing in connection with a non-dispositive motion. *Id.* at 1179–80.

Our court of appeals has not ruled on whether a motion for class certification is more than tangentially related to the merits for the purposes of determining whether the compelling reasons standard applies. “[M]ost district courts to consider the question,” however, “have found that a motion for class certification is more than tangentially related to the underlying cause of action and therefore merits application of the compelling reasons standard. *Philips v. Ford Motor Co.*, No. C 14-02989 LHK, 2016 WL 7374214, at *2 (N.D. Cal. Dec. 20, 2016) (Judge Lucy Koh). Here, it is certainly the case that the issues raised at class certification were

1 intertwined with the merits of the action, and therefore this order applies the compelling reasons
 2 standard.

3 Civil Local Rule 79-5 requires that administrative motions to file under seal be
 4 accompanied by “[a] declaration establishing that the document sought to be filed under seal, or
 5 portions thereof, are sealable.” In our district, “[r]eference to a stipulation or protective order
 6 that allows a party to designate certain documents as confidential is not sufficient to establish
 7 that a document, or portions thereof, are sealable.” Moreover, administrative motions to file
 8 under seal must “be narrowly tailored to seek sealing only of sealable material.” Civ. L.R. 79-5.
 9 Supporting declarations may not rely on vague boilerplate language or nebulous assertions of
 10 potential harm but must explain with particularity why any document or portion thereof remains
 11 sealable under the applicable legal standard, especially in light of all the information that has
 12 already become public over the course of this litigation via court filings, orders, and public
 13 hearings.

14 With these principles in mind, this order **GRANTS IN PART AND DENIES IN PART** the
 15 parties’ administrative motions as stated in the tables below. To the extent their motions are
 16 denied, each movant shall file revised versions of their documents consistent with this order on
 17 the public docket by **MAY 24 AT NOON**.

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19 **1. PLAINTIFFS’ ADMINISTRATIVE MOTIONS TO SEAL.**

| 20 DKT. NO. | 21 DOCUMENT SOUGHT TO BE SEALED | 22 RULING |
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| 21 83 | 22 (i) Exhibits 10–22 to the declaration 23 of Attorney Thomas Reyda; and 24 (ii) associated portions of plaintiff’s 25 motion for class certification. | 26 Compelling reasons warrant the sealing 27 of customer account numbers, phone 28 numbers, and names contained in these documents. To this extent only, this request is GRANTED . The request to seal these documents is otherwise DENIED . The supporting declaration fails to show even good cause because it merely concludes in generic terms that this information was designated as confidential under a previous protective order and that these documents “relate to, and include . . . internal, non-public” information. Moreover, this request has not been narrowly tailored as required by Civil Local Rule 79-5. |

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| | <p>(i) Exhibits C–H to the declaration of Randall Snyder;</p> <p>(ii) associated portions of the declaration of Randall Snyder; and</p> <p>(iii) associated portions of plaintiff’s motion for class certification.</p> | <p>The request to seal these documents is DENIED. The supporting declaration fails to show even good cause because it merely concludes in generic terms that this information was designated as confidential under a previous protective order and that these documents “relate to, and include . . . internal, non-public” information. Moreover, this request has not been narrowly tailored as required by Civil Local Rule 79-5.</p> |
| | <p>(i) Portions of the declaration of Colin Weir; and</p> <p>(ii) associated portions of plaintiff’s motion for class certification.</p> | <p>The request to seal portions of these documents is DENIED. The supporting declaration fails to show even good cause because it merely concludes in generic terms that this information was designated as confidential under a previous protective order and that these documents “relate to, and include . . . internal, non-public” information.</p> |
| 114 | <p>(i) Exhibits 1–6 to the Reyda Declaration; and</p> <p>(ii) associated portions of plaintiff’s opposition to Citibank’s motion to exclude the testimony of Randal Snyder and Colin Weir.</p> | <p>Citibank previously designated these documents confidential pursuant to the protective order in this case. Citibank, however, failed to submit a supporting declaration as required by Local Rule 79-5(e). Therefore, the motion to seal is DENIED in its entirety.</p> |
| 120 | <p>(i) Exhibits 1–3 to the declaration of Attorney Joel Smith;</p> <p>(ii) portions of Exhibits 4 and 5 to the declaration of Attorney Joel Smith; and</p> <p>(iii) associated portions of plaintiff’s reply in support of his motion for class certification.</p> | <p>Citibank previously designated the documents confidential pursuant to the protective order in this case. Citibank, however, failed to submit a supporting declaration as required by Local Rule 79-5(e). Therefore, the motion to seal is DENIED in its entirety.</p> |

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For the Northern District of California

2. CITIBANK'S ADMINISTRATIVE MOTIONS TO SEAL.

| DKT. NO. | DOCUMENT SOUGHT TO BE SEALED | RULING |
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| 96 | (i) Exhibits 1 and 2 to the declaration of Amy Mullahey; (ii) portions of the declaration of Amy Mullahey; (iii) portions of the deposition of Amy Mullahey; and (iv) associated portions of Citibank's opposition to plaintiff's motion for class certification. | Compelling reasons warrant the sealing of customer account numbers, phone numbers, and names contained in these documents. To this extent only, this request is GRANTED . The request to seal these documents is otherwise DENIED . The supporting declaration fails to show even good cause because it merely concludes in generic terms that this information was designated as confidential under a previous protective order and that these documents "include[] proprietary information about Citibank's internal policies and procedures, which are not publicly disseminated and which give Citibank a competitive advantage in the marketplace." |
| | (i) Exhibit 1 to the declaration of Matthew Roe; (ii) portions of the declaration of Matthew Roe; (iii) portions of the deposition of Matthew Roe; and (iv) associated portions of Citibank's opposition to plaintiff's motion for class certification. | Compelling reasons warrant the sealing of customer account numbers, phone numbers, and names contained in these documents. To this extent only, this request is GRANTED . The request to seal these documents is otherwise DENIED . The supporting declaration fails to show even good cause because it merely concludes in generic terms that this information was designated as confidential under a previous protective order and that these documents "include[] proprietary information about Citibank's internal policies and procedures, which are not publicly disseminated and which give Citibank a competitive advantage in the marketplace." |
| | (i) Portions of the declaration of Elizabeth Barnette; and (ii) associated portions of Citibank's opposition to plaintiff's motion for class certification. | The request to seal this information is DENIED . The supporting declaration fails to show even good cause because it merely concludes in generic terms that this information was designated as confidential under a previous protective order and that these documents "include[] proprietary information about Citibank's internal policies and procedures, which are not publicly disseminated and which give Citibank a competitive advantage in the marketplace." |

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| 1 | (i) Portions of the declaration of Todd Meeks; (ii) portions of the deposition of Todd Meeks; and (iii) associated portions of Citibank's opposition to plaintiff's motion for class certification. | The request to seal this information is DENIED . The supporting declaration fails to show even good cause because it merely concludes in generic terms that this information was designated as confidential under a previous protective order and that these documents "include[] proprietary information about Citibank's internal policies and procedures, which are not publicly disseminated and which give Citibank a competitive advantage in the marketplace." |
| 8 | (i) Portions of the declaration of Andrew Grayot; and (ii) associated portions of Citibank's opposition to plaintiff's motion for class certification. | The request to seal this information is DENIED . The supporting declaration fails to show even good cause because it merely concludes in generic terms that this information was designated as confidential under a previous protective order and that these documents "include[] proprietary information about Citibank's internal policies and procedures, which are not publicly disseminated and which give Citibank a competitive advantage in the marketplace." |
| 15 | (i) Exhibit 2 to the declaration of Kelly Booth; (ii) portions of the declaration of Kelly Booth; and (iii) associated portions of Citibank's opposition to plaintiff's motion for class certification. | Compelling reasons warrant the sealing of customer account numbers, phone numbers, and names contained in these documents. To this extent only, this request is GRANTED . The request to seal these documents is otherwise DENIED . The supporting declaration fails to show even good cause because it merely concludes in generic terms that this information was designated as confidential under a previous protective order and that these documents "include[] proprietary information about Citibank's internal policies and procedures, which are not publicly disseminated and which give Citibank a competitive advantage in the marketplace." |

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| | <p>1 (i) Portions of the deposition of Alan 2 Exelrod; and 3 4 (ii) associated portions of Citibank's 5 opposition to plaintiff's motion for 6 class certification.</p> | <p>7 Compelling reasons warrant the sealing 8 of customer phone numbers. To this 9 extent only, this request is GRANTED. 10 The request to seal these documents is 11 otherwise DENIED. The supporting 12 declaration fails to show even good 13 cause because it merely concludes in 14 generic terms that this information was 15 designated as confidential under a 16 previous protective order and that these 17 documents "include[] proprietary 18 information about Citibank's internal 19 policies and procedures, which are not 20 publicly disseminated and which give 21 Citibank a competitive advantage in the 22 marketplace."</p> |
| | <p>10 (i) Portions of the deposition of Colin 11 Weir; and 12 13 (ii) associated portions of Citibank's 14 opposition to plaintiff's motion for 15 class certification.</p> | <p>16 Compelling reasons warrant the sealing 17 of customer phone numbers and names 18 contained in these documents. To this 19 extent only, this request is GRANTED. 20 The request to seal these documents is 21 otherwise DENIED. The supporting 22 declaration fails to show even good 23 cause because it merely concludes in 24 generic terms that this information was 25 designated as confidential under a previous protective 26 order and that these documents 27 "include[] proprietary information about 28 Citibank's internal policies and procedures, which are not publicly disseminated and which give Citibank a competitive advantage in the marketplace."</p> |
| | <p>19 (i) Portions of the declaration of 20 David Kalat; and 21 22 (ii) associated portions of Citibank's 23 opposition to plaintiff's motion for 24 class certification.</p> | <p>25 The request to seal this information is 26 DENIED. The supporting declaration 27 fails to show even good cause because it 28 merely concludes in generic terms that this information was designated as confidential under a previous protective order and that these documents "include[] proprietary information about Citibank's internal policies and procedures, which are not publicly disseminated and which give Citibank a competitive advantage in the marketplace."</p> |

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| | <p>(i) Portions of the declaration of Margaret Daley; and</p> <p>(ii) associated portions of Citibank’s opposition to plaintiff’s motion for class certification.</p> | <p>Compelling reasons warrant the sealing of customer account numbers, phone numbers, and names contained in these documents. To this extent only, this request is GRANTED. The request to seal these documents is otherwise DENIED. The supporting declaration fails to show even good cause because it merely concludes in generic terms that this information was designated as confidential under a previous protective order and that these documents “include[] proprietary information about Citibank’s internal policies and procedures, which are not publicly disseminated and which give Citibank a competitive advantage in the marketplace.”</p> |
| 126 | The deposition of Margaret Daley. | <p>Compelling reasons warrant the sealing of customer account numbers, phone numbers, and names contained in these documents. To this extent only, this request is GRANTED. The request to seal this document is otherwise DENIED. The supporting declaration fails to show even good cause because it merely concludes in generic terms that this information was designated as confidential under a previous protective order and that these documents describe “internal practices, procedures, and information, which are not publicly disseminated.” Moreover, this request has not been narrowly tailored as required by Civil Local Rule 79-5.</p> |
| 136 | <p>(i) Portions of the deposition of Colin Weir; and</p> <p>(ii) associated portions of Citibank’s supplemental opposition to plaintiff’s motion for class certification.</p> | <p>The request to seal this information is DENIED. The supporting declaration fails to show even good cause because it merely concludes in generic terms that this information was designated as confidential under a previous protective order and that these documents “include[] proprietary information about Citibank’s internal policies and procedures, which are not publicly disseminated and which give Citibank a competitive advantage in the marketplace.”</p> |

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| 1 | (i) Portions of the deposition of Margaret Daley; and (ii) associated portions of Citibank's supplemental opposition to plaintiff's motion for class certification. | The request to seal this information is DENIED . The supporting declaration fails to show even good cause because it merely concludes in generic terms that this information was designated as confidential under a previous protective order and that these documents "include[] proprietary information about Citibank's internal policies and procedures, which are not publicly disseminated and which give Citibank a competitive advantage in the marketplace." |
| 8 | (i) Portions of the deposition of David Kalat; and (ii) associated portions of Citibank's supplemental opposition to plaintiff's motion for class certification. | The request to seal this information is DENIED . The supporting declaration fails to show even good cause because it merely concludes in generic terms that this information was designated as confidential under a previous protective order and that these documents "include[] proprietary information about Citibank's internal policies and procedures, which are not publicly disseminated and which give Citibank a competitive advantage in the marketplace." |
| 15 | (i) Exhibit 1 to the surrebuttal of Margaret Daley; (ii) portions of the surrebuttal of Margaret Daley; and (ii) associated portions of Citibank's supplemental opposition to plaintiff's motion for class certification. | Compelling reasons warrant the sealing of customer account numbers, phone numbers, and names contained in these documents. To this extent only, this request is GRANTED . The request to seal these documents is otherwise DENIED . The supporting declaration fails to show even good cause because it merely concludes in generic terms that this information was designated as confidential under a previous protective order and that these documents "include[] proprietary information about Citibank's internal policies and procedures, which are not publicly disseminated and which give Citibank a competitive advantage in the marketplace." |

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| 1 2 3 4 5 6 7 8 9 | 140 Portions of the deposition of Colin Weir. | Compelling reasons warrant the sealing of customer phone numbers and names contained in these documents. To this extent only, this request is GRANTED . The request to seal these documents is otherwise DENIED . The supporting declaration fails to show even good cause because it merely concludes in generic terms that this information was designated as confidential under a previous protective order and that these documents “include[] proprietary information about Citibank’s internal policies and procedures, which are not publicly disseminated and which give Citibank a competitive advantage in the marketplace.” |
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13 **IT IS SO ORDERED.**

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15 Dated: May 9, 2019.

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18 WILLIAM ALSUP
19 UNITED STATES DISTRICT JUDGE
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